



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4778-99

5 November 1999

[REDACTED] USMC
[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 26 July 1999, a copy of which is attached. They also considered your rebuttal letter dated 24 September 1999 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board noted that Marine Corps Order P1610.7D, paragraph 3012.3, states that "Attempting to utilize this [fitness report submission] time as an additional counseling session is inappropriate..." While they found that paragraphs 3012.2 and 3012.3 do require the reporting senior (RS) personally to show the Marine reported on the completed fitness report, they concluded that your RS's failure to do so, if he did not, was not a material error warranting corrective action. They were unable to find that your reviewing officer did not meet his obligation to ensure adherence to fitness report policy; or that he erred by indicating that he had "limited" observation of your performance, when a prior report showed he had "sufficient" observation and a later report showed he had "insufficient" observation. They found the fact that your prior fitness report from the same RS reflects no problem with your judgment does not establish that you were marked incorrectly in your contested report.

Finally, they noted that your reports for 8 July 1998 to 31 July 1999, which included the period in question, and 1 January to 8 April 1999, both showed the third lowest mark, "C", in "judgment."

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610

MMER/PERB

JUL 26 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED]'s DD Form 149 of 30 Apr 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 21 July 1999 to consider Major [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 980708 to 981231 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there are inconsistencies between the mark of "above average" in Item 14g (judgment) and several of the comments in Section C. She also disclaims any counseling in connection with the report's submission and states the evaluation was not presented to her by the Reporting Senior, but rather by his secretary.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Notwithstanding the petitioner's own statement, there is absolutely no documentary evidence to indicate she did not receive proper guidance/counseling during the six months covered by the challenged fitness report. In this regard, the Board observes that guidance/counseling can and does occur in many styles and forums. Certainly the inherent relationship between the Reporting Senior and the petitioner (Battalion Commander/Company Commander) would have ensured some type of performance feedback.

b. Within the overall context of the exemplary evaluation contained in the fitness report, the "above average" grade in Item 14g seems out of place. That grade, however, is not indicative of any adversity, nor is it contrary to the spirit and intent of the philosophy of reference (b) on grading each attribute. Once again, the petitioner provides no proof that the mark of "above average" is either unwarranted or in error.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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c. Regardless of who presented the report to the petitioner, she did sight and sign the completed evaluation prior to its incorporation into her official record. Subparagraph 2003.3d of reference (b) states that the Reporting Senior has the responsibility of referring completed evaluations for signature; however, nowhere does it state that the Reporting Senior must physically present the completed evaluation to the Marine reported on.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps